

(2021) 07 GUJ CK 0021
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9921 Of 2021

Kalubhai Alabhai Chavda

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 306, 498A
Dowry Prohibition Act, 1961 — Section 4

Citation : (2021) 07 GUJ CK 0021

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Manoj T Danak, Moxa Thakker

Final Decision : Allowed

Judgement

A.S. Supehia, J

RULE. Learned Additional Public Prosecutor waives service of notice of rule for and on behalf of respondent â?" State.

[1] Heard the learned advocates for the respective parties by video conferencing.

[2] By way of the present application filed under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in

connection with the FIR being C.R. No.11193003210437 of 2021 registered with Amreli City Police Station, Dist.Amreli for the offences punishable

under Sections 306 and 498A of the Indian Penal Code, 1860 as well as under Section 4 of the Dowry Prohibition Act, 1961.

[3] It is the case of the prosecution that in the year 2016, the sister of the first informant namely, Kanchanben married with the applicant as per rights

and customs of the society. Thereafter, she was used to complaint about ill-

treatment given to her by the applicant and other relatives of the applicant.

On 07.04.2021 at about 07:30 hrs., the brother of the first informant namely, Valjibhai informed the first informant that Kanchan called me and

informed that she has administered acid due to ill-treatment of the applicant and accordingly, she was admitted in a hospital hence, the first informant

and his brother rushed to the hospital and on 09.04.2021, during the course of the medical treatment, she died.

[4] Learned advocate for the applicant has submitted that the incident has taken place on 07.04.2021 and on the very same day, Janvajog Entry being

Entry No.23 of 2021 was made by the Police but neither the deceased nor any of the persons, including the complainant pointed finger towards the

applicant with respect to the allegations as mentioned in the present FIR but all of a sudden, on 23.04.2021, the impugned F.I.R. came to be lodged.

He has submitted that the applicant married in the year 2016 but he was not informed that the deceased is suffering from the disease of Schizophrenia

and even the applicant was getting her treatment right from beginning of his marriage. He has further submitted that the applicant is a Government

servant and has sufficient means of income and there is no allegation of dowry either written or oral against him. It is submitted that the nature of

allegations are such for which custodial interrogation of the applicant at this stage is not necessary. He has further submitted that the applicant will

keep himself available during the course of investigation, as well as in the trial also and will not flee from justice.

[4.1] Learned advocate for the applicant, upon instructions, has submitted that the applicant is ready and willing to abide by all the conditions, including

imposition of conditions with regard to powers of investigating agency to file an application before the competent Court for his remand. He has further

submitted that upon filing of such application by the investigating agency, the right of the applicant accused to oppose such application on merits may

be kept open. Learned advocate, therefore, has submitted that considering the above facts, the applicant may be granted anticipatory bail.

[5] On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondentâ" State has opposed grant of anticipatory bail

looking to the nature and gravity of the offence.

[6] Having heard the learned advocates for the parties and perusing the material

placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant.

[7] This Court has considered following aspects;

- (a) Prima facie it appears that the deceased was suffering from Schizophrenia;
- (b) There is an explained delay of 17 days in registering the F.I.R.;
- (c) No antecedents are pointed out against the applicant;
- (d) The role attributed to the applicant;
- (d) Considering the facts of the case, the custodial interrogation of the applicant at this stage is not necessary.

[8] This Court has also taken into consideration the law laid down by the Apex Court in the cases of Sushila Aggarwal vs. State (Nct of Delhi), AIR 2020 SC 831 and Siddharam Satlingappa Mhetre vs State of Maharashtra, A.I.R. 2011 S.C. 312.

[9] In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with FIR

being C.R. No.11193003210437 of 2021 registered with Amreli City Police Station, Dist.Amreli on his executing a personal bond of Rs.10,000/-

(Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 15.07.2021 between 11.00 a.m. and 2.00 p.m.;
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till

the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week.

[10] Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicant, if he considers it proper and just and the Magistrate would decide it on merits. The applicant shall remain present before the concerned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining the application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the concerned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

[11] At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

[12] The application is allowed in the aforesaid terms. RULE is made absolute to the aforesaid extent. Registry is directed to send a copy of this order to the concerned authority / court through Fax message, email and/or any other suitable electronic mode.

[13] Learned advocate for the applicant is also permitted to send a copy of this order to the concerned authority/court through Fax message, email and/or any other suitable electronic mode.